



DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and
Trade Bureau

Industry Circular

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Tie-In Sales — An Unlawful Trade Practice

To: Distilled Spirits Plants, Breweries, Wineries, Taxpaid Wine Bottling Houses, Wholesale Liquor Dealers, Importers, Retailers, and Others Concerned.

What is the purpose of this circular?

Our purpose in publishing this circular is to remind alcohol industry members and others that tie-in sales of alcohol beverage "products," as defined in 27 CFR 6.11, and hereafter referred to as "products," are prohibited inducements under the "Tied-House" provisions of the Federal Alcohol Administration Act (FAA Act).

This Industry Circular supersedes Industry Circular 2003-3.

What is a Tie-in Sale?

A tie-in sale occurs when an industry member requires a retailer to purchase a product that the retailer did not want to purchase, in order to obtain the product the retailer wants. Tie-in sales are a form of unlawful quota sales covered by the FAA Act in 27 U.S.C. 205(b)(7). Tie-in sales are also one of the unlawful means to induce covered under the "Tied-House" regulations promulgated under the FAA Act, which are contained in 27 CFR part 6, "Tied-House." In particular, 27 CFR 6.72 defines a tie-in sale:

The act by an industry member of requiring that a retailer purchase one product (as defined in § 6.11) in order to obtain another constitutes a means to induce within the meaning of the Act. This includes the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium package, i.e., a distinctive decanter, or wooden or tin box. This also includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not precluded from selling two or more kinds or brands of products to a retailer at a special combination price, provided the retailer has the option of purchasing either product at the usual price, and the retailer is not required to purchase any product it does not want.

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A tie-in sale results in a violation of the FAA Act "Tied-House" provisions (27 U.S.C. 205 (b)(7)) and TTB's part 6 regulations (27 CFR 6.21(g)) when the prerequisite elements

of means to induce, exclusion, interstate or foreign commerce, and similar State law (in the case of malt beverages) are established.

TTB deems tie-in sales to be a serious unlawful trade practice that inherently puts retailer independence at risk in the context of exclusion. 27 CFR 6.152(d).

What are some examples of tie-in sales?

Tie-in sales occur when:

- A retailer must purchase a certain amount of regular distilled spirits, whether bottled or cased, in order to be allowed to purchase distilled spirits in a special holiday container or packaging.
- A retailer must purchase ten cases of Winery X's Merlot from a wholesaler in order to purchase ten cases of Winery X's Chardonnay.
- A retailer must purchase an industry member's pre-mixed alcohol beverage specialty product (for example, strawberry daiquiri) in order to purchase a certain amount of their regular distilled spirits case goods. In other words, the regular distilled spirits products are not sold separately but only in combination with the specialty product. See § 6.93 of the TTB regulations (27 CFR 6.93) for rules concerning packaging of products with non-alcoholic items.
- A retailer is required to purchase a two-bottle package containing one each of a winery's Merlot and Chardonnay in order to get the Merlot. The Merlot is not available for purchase separately.
- A retailer must purchase a slow moving wine in order to purchase a distilled spirit that is in heavy demand. The distilled spirit is not available for purchase separately.

The above examples are considered tie-in sales because the retailer is compelled or required to purchase one product in order to obtain the product the retailer wants. A tie-in sale occurs regardless of whether the two products are the same brand or different brands of products. A tie-in sale also occurs if another *category* of alcohol beverage is involved.

Whom may I contact concerning the information in this circular?

If you have any questions about tie-in sales, you may contact the Trade Investigations Division at:

Trade Investigations Division
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1310 G Street, NW. Box 12
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Signed by John Manfreda

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